IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 572 OF 1991.
WITH
CROSS OBJECTION

The State of Maharashtra. ... Appellant.

Versus.

Jama Dhondu Mhatre,
(since deceased through LRs.)
1A. Fashibai Joma Mhatre
(wife deceased)
1B. Vishnu Joma Mhatre,
1C. Laxman Joma Mhatre,
1D. Narayan Joma Mahtre,
1E. Sitabai Gopinath Khanavarkar,
All adults, Occ.: Agriculture,
R/at Navade, Taluka: Panvel,
Dist. Raigad. ... Respondents.

Shri A.R.Patil, A.G.P. for the Appellant.

Shri Rajiv L.Patil for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 30th March, 2007.

ORAL JUDGMENT.

1. Submissions of the learned Counsel appearing for the parties were heard on 7th March 2001 and the Judgment was reserved.

2. The Appellant-State of Maharashtra has taken an exception to the Judgment and Award dated 31st March 1990 passed by the learned Civil Judge, Senior Division, Raigad at Alibag in Land Acquisition Reference No.48 of 1989. The said Reference under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the

said Act") was made at the instance of the original Respondent in the First Appeal. The acquisition relates to a land bearing Survey No.181, Hissa Nos.2+3 of village Navade, Taluka Panvel, District Raigad. The area of the acquired land is 4130 sq.meters. The Notification under section 4 of the said Act was issued on 3rd February 1970 declaring the intention of the Appellant-State of Maharashtra to acquire the land for the public purpose of development of the satellite city of Navi Mumbai. The Award under section 11 of the said Act was made on 30th August 1985. In the Reference Application filed by the original Respondent, market value at the rate of Rs.25/- per sq.meter was claimed. By the impugned Judgment and Award, the Reference Court has fixed the market value at the rate of Rs.10/- per sq.meter. The Reference Court has also awarded the statutory benefits to the Respondents.

3. The learned Assistant Government Pleader appearing for the State of Maharashtra submitted that the application for reference was barred by limitation as it was not filed by the original Respondent within the time stipulated under section 18 of the said Act. He submitted that the Reference itself was not competent as it was not filed within the stipulated period of limitation. He submitted that the Reference Court gets jurisdiction to decide the Reference on merits provided

the Reference is legal and valid. In the present case since the Reference itself was not competent, the impugned Award deserves to be quashed and set aside. Even on merits he submitted that the market value fixed by the Reference Court is on the higher side considering the fact that on the date of notification under section 4 of the said Act, the acquired land was an agricultural and undeveloped land. The learned Counsel for the Respondents submitted that the issue of limitation was neither raised before the Reference Court nor in the Memorandum of Appeal filed in this Court. He submitted that in view of the law laid down by this Court, the objection to limitation cannot be taken at the time of final hearing of the Appeal, especially when in the Memorandum of Appeal no such ground has been incorporated. He invited my attention to the cross objection filed by the Respondents and submitted that in view of the various decisions of this Court, the cross objection deserves to be allowed.

4. In reply to the submission of the learned Counsel appearing for the Respondents, the learned Assistant Government Pleader submitted that the cross objection is not maintainable as the Reference itself was barred by limitation and in any event the amount of market value fixed by the trial Court is just and reasonable.

5. I have carefully considered the submissions. The first question to be considered is whether it is open for the Appellant to raise the contention regarding the bar of limitation. If answer to this question is in the affirmative, then this Court will have to consider whether the application for reference was filed within the stipulated period of limitation.

6. In this connection my attention was invited to a decision of the learned Single Judge of this Court dated 22nd February 2007 in First Appeals No.251 and 1476 of 1996. The occasion for deciding this issue arose as two learned Judges while deciding the said Appeals recorded conflicting opinions. In view of the difference of opinion between the two learned Judges of this Court, the Hon'ble the Chief Justice referred the First Appeals to another learned Single Judge of this Court for resolving the conflict. The learned Single Judge by his Judgment dated 22nd February 2007 recorded his opinion resolving the conflict. The learned Single Judge in paragraph 4 of the said decision has framed following two questions for consideration:

(a) Can the Appellant be permitted to raise the issue of limitation for the first time as a preliminary objection, during the oral

arguments, without even making an application to amend the Appeal Memo and without affording an opportunity to the Respondents to oppose the same ?

(b) If the Appeal Memo is permitted to be amended, whether this issue of limitation ought to be remanded back to the Reference Court, so as to enable both the parties to lead evidence on the factual aspect with regard to this issue of limitation ?

The learned Single Judge answered the said question in paragraphs 22 and 23 of the Judgment which reads thus:

"22. In the light of the above discussion, I answer the first question in the negative. If the Appellant wants to raise the issue of limitation, the same will have to be by way of an amendment application to amend the Memo of Appeal and sufficient opportunity ought to be given to the Respondents-Claimants to oppose the same.

23. I answer the second question in the affirmative."

In paragraph 21 the learned Single Judge observed as under:

> 21. In the above, in the group of 142 First Appeals, most of the Claimants are small and illiterate farmers, and they cannot be denied justice on technicalities and obstructive attitude of the Appellant State, which amounts of filibustering tactics."

7. In the present case, a perusal of the written statement filed by the Appellant-State to the Reference shows that the issue of bar of limitation was not at all raised by the Appellant. The issue was admittedly not raised before the Reference Court when the reference was heard finally. In the memorandum of appeal the issue of bar of limitation has not been raised. It is pertinent to note that the First Appeal is pending in this Court from 10th October 1990. The Appeal appeared on board on 20th march 2006 and 18th January 2007. Till the Appeal was called out for hearing on 2nd March 2007, no application was made by the Appellant-State for the amendment of the Memorandum of Appeal for raising the issue of bar of limitation.

8. Apart from the fact that the application for amendment of the Memorandum of Appeal is not filed, the

Appellant has not even sought time to file Application for Amendment. In any event, it is too late in the day now to grant time to make such an application. In the present case the notification under section 4 of the said Act was issued on 3rd February 1970. The award is made on 30th April 1985 and possession of the acquired land was taken in the year 1985 itself. The reference was forwarded to the Civil Court on 23rd April 1987. The reference was decided in March 1990 and the present Appeal was filed in this Court on 10th October 1990. There is no material placed on record in the form of additional paper book to show as to how the reference was barred by limitation. Considering these glaring facts, the issue of bar of limitation cannot be considered.

9. Now the other issue to be decided is as regards the market value of the acquired land. It is not in dispute between the parties that large tracts of land from the village Navade and other adjoining villages in Taluka Panvel, District Raigad were notified for acquisition on 3rd February 1970 for the same public purpose of development of the satellite city of Navi Mumbai. Some of the appeals arising out of the references under section 18 of the said Act arising out of lands acquired from village Navade have been decided by this Court. The learned Counsel for the Respondents

has relied upon a decision of the Division Bench of this Court dated 16th September 2004 by which First Appeal No.423 of 1996 and First Appeal No.1534 of 1996 were decided. A perusal of the said decision shows that a notification under section 4 of the said Act was issued in respect of the land at village Navade subject matter of the said Appeal on 3rd February 1970. The Division Bench relied upon the decision of another Division Bench dated 31st March 2004 in First Appeal No.757 of 2003 and First Appeal No.1782 of 2002. The subject matter of the said Appeals was acquisition of land from the very village Navade which were notified on 3rd February 1970. The Division Bench fixed the market value of the land at the rate of Rs.25/- per sq.meter. My attention is also invited to a decision of the learned Single Judge dated 28th March 2005 passed in First appeal No.62 of 1992 and First Appeal No.156 of 1992. The learned Single Judge was dealing with the acquisition of land at village Navade which was notified on the same day i.e. 3rd February 1970. The learned Single Judge observed that in the decision dated 16th September 2004 in First Appeal No.423 of 1996 and First Appeal No.1534 of 1996, the Division Bench dealt with the acquired land from the village Navade which was at a distance of 200 sq.meters from the National Highway and therefore, the market rate was fixed at Rs.25/- per sq.meter. The learned Single Judge held that the land subject matter of the Appeals

before him was situated abutting the Bombay-Pune National Highway. Therefore, the learned Judge fixed the market value at the rate of Rs.30/- per sq.meter.

10. Coming back to the facts of the present case, the original Claimant examined one Shri Jeevan Narayan Kulkarni, a valuer as a witness. He produced a report of valuation and a map drawn by him in his evidence. In paragraph 12 of the impugned Judgment, the learned trial Judge has recorded that it is not in dispute that the acquired land is abutting Bombay-Pune National Highway. A submission was made that in view of this position, as held by the learned Single Judge by judgment and order dated 28th March 2005 in First Appeals Nos.68 of 1992 and 136 of 1992, the Respondents are entitled to the market value at the rate of Rs.30/- per sq.meter. However, a perusal of the cross objection filed by the Respondents shows that the enhancement is claimed at the rate of Rs.25/- per sq.meter. Therefore, the Respondents are not entitled to the market value at the rate exceeding Rs.25/- per sq.meter. Hence, in the present case the market value will have to be fixed at Rs.25/- per sq.meter.

11. Hence, I pass the following order:

(a) First Appeal No.572 of 1991 is dismissed. The

Appellant to pay costs of this Appeal to the Respondents.

(b) Cross objection filed by the Respondents is allowed. The impugned Judgment and Award is modified and it is directed that the Respondents-Claimants will be entitled to the market value at the rate of Rs.25/- per sq.meter. Apart from the market value, the Respondents will be entitled to the statutory benefits under sections 23(1-A), 23(2) and 28 of the Land Acquisition Act, 1894.

(c) The Respondents will be entitled to the proportionate costs of the Reference and the Cross Objection from the Appellant.

(d) The learned trial Judge will calculate the amount of compensation payable to the Respondents on the basis of this Judgment within a period of three months from the date of receipt of writ of this order.

(e) Writ and the Record and Proceedings be send to the Reference Court at the earliest.

Judge.